

1-1 By: Nelson S.B. No. 746
 1-2 (In the Senate - Filed February 22, 2013; February 26, 2013,
 1-3 read first time and referred to Committee on Health and Human
 1-4 Services; March 13, 2013, reported adversely, with favorable
 1-5 Committee Substitute by the following vote: Yeas 6, Nays 1;
 1-6 March 13, 2013, sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8 Nelson	X			
1-9 Deuell	X			
1-10 Huffman			X	
1-11 Nichols	X			
1-12 Schwertner	X			
1-13 Taylor			X	
1-14 Uresti		X		
1-15 West	X			
1-16 Zaffirini	X			

1-18 COMMITTEE SUBSTITUTE FOR S.B. No. 746 By: Nelson

1-19 A BILL TO BE ENTITLED
 1-20 AN ACT

1-21 relating to unlawful acts against and criminal offenses involving
 1-22 the Medicaid program.

1-23 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-24 SECTION 1. Section 36.002, Human Resources Code, is amended
 1-25 to read as follows:

1-26 Sec. 36.002. UNLAWFUL ACTS. A person commits an unlawful
 1-27 act if the person:

1-28 (1) knowingly makes or causes to be made a false
 1-29 statement or misrepresentation of a material fact to permit a
 1-30 person to receive a benefit or payment under the Medicaid program
 1-31 that is not authorized or that is greater than the benefit or
 1-32 payment that is authorized;

1-33 (2) knowingly conceals or fails to disclose
 1-34 information that permits a person to receive a benefit or payment
 1-35 under the Medicaid program that is not authorized or that is greater
 1-36 than the benefit or payment that is authorized;

1-37 (3) knowingly applies for and receives a benefit or
 1-38 payment on behalf of another person under the Medicaid program and
 1-39 converts any part of the benefit or payment to a use other than for
 1-40 the benefit of the person on whose behalf it was received;

1-41 (4) knowingly makes, causes to be made, induces, or
 1-42 seeks to induce the making of a false statement or
 1-43 misrepresentation of material fact concerning:

1-44 (A) the conditions or operation of a facility in
 1-45 order that the facility may qualify for certification or
 1-46 recertification required by the Medicaid program, including
 1-47 certification or recertification as:

1-48 (i) a hospital;
 1-49 (ii) a nursing facility or skilled nursing

1-50 facility;
 1-51 (iii) a hospice;
 1-52 (iv) an intermediate care facility for the
 1-53 mentally retarded;

1-54 (v) an assisted living facility; or
 1-55 (vi) a home health agency; or

1-56 (B) information required to be provided by a
 1-57 federal or state law, rule, regulation, or provider agreement
 1-58 pertaining to the Medicaid program;

1-59 (5) except as authorized under the Medicaid program,
 1-60 knowingly pays, charges, solicits, accepts, or receives, in

2-1 addition to an amount paid under the Medicaid program, a gift,
 2-2 money, a donation, or other consideration as a condition to the
 2-3 provision of a service or product or the continued provision of a
 2-4 service or product if the cost of the service or product is paid
 2-5 for, in whole or in part, under the Medicaid program;

2-6 (6) knowingly presents or causes to be presented a
 2-7 claim for payment under the Medicaid program for a product provided
 2-8 or a service rendered by a person who:

2-9 (A) is not licensed to provide the product or
 2-10 render the service, if a license is required; or

2-11 (B) is not licensed in the manner claimed;

2-12 (7) knowingly makes or causes to be made a claim under
 2-13 the Medicaid program for:

2-14 (A) a service or product that has not been
 2-15 approved or acquiesced in by a treating physician or health care
 2-16 practitioner;

2-17 (B) a service or product that is substantially
 2-18 inadequate or inappropriate when compared to generally recognized
 2-19 standards within the particular discipline or within the health
 2-20 care industry; or

2-21 (C) a product that has been adulterated, debased,
 2-22 mislabeled, or that is otherwise inappropriate;

2-23 (8) makes a claim under the Medicaid program and
 2-24 knowingly fails to indicate the type of license and the
 2-25 identification number of the licensed health care provider who
 2-26 actually provided the service;

2-27 (9) ~~conspires to commit a violation of Subdivision~~
 2-28 ~~(1), (2), (3), (4), (5), (6), (7), (8), (10), (11), (12), or (13)~~

2-29 ~~[knowingly enters into an agreement, combination, or conspiracy to~~
 2-30 ~~defraud the state by obtaining or aiding another person in~~
 2-31 ~~obtaining an unauthorized payment or benefit from the Medicaid~~
 2-32 ~~program or a fiscal agent];~~

2-33 (10) is a managed care organization that contracts
 2-34 with the Health and Human Services Commission or other state agency
 2-35 to provide or arrange to provide health care benefits or services to
 2-36 individuals eligible under the Medicaid program and knowingly:

2-37 (A) fails to provide to an individual a health
 2-38 care benefit or service that the organization is required to
 2-39 provide under the contract;

2-40 (B) fails to provide to the commission or
 2-41 appropriate state agency information required to be provided by
 2-42 law, commission or agency rule, or contractual provision; or

2-43 (C) engages in a fraudulent activity in
 2-44 connection with the enrollment of an individual eligible under the
 2-45 Medicaid program in the organization's managed care plan or in
 2-46 connection with marketing the organization's services to an
 2-47 individual eligible under the Medicaid program;

2-48 (11) knowingly obstructs an investigation by the
 2-49 attorney general of an alleged unlawful act under this section;

2-50 (12) knowingly makes, uses, or causes the making or
 2-51 use of a false record or statement material to ~~[conceal, avoid, or~~
 2-52 ~~decrease]~~ an obligation to pay or transmit money or property to this
 2-53 state under the Medicaid program, or knowingly conceals or
 2-54 knowingly and improperly avoids or decreases an obligation to pay
 2-55 or transmit money or property to this state under the Medicaid
 2-56 program; or

2-57 (13) knowingly engages in conduct that constitutes a
 2-58 violation under Section 32.039(b).

2-59 SECTION 2. Subsection (b), Section 36.104, Human Resources
 2-60 Code, is amended to read as follows:

2-61 (b) If the state declines to take over the action, the
 2-62 person bringing the action may proceed without the state's
 2-63 participation. On request by the state, the state is entitled to be
 2-64 served with copies of all pleadings filed in the action and be
 2-65 provided at the state's expense with copies of all deposition
 2-66 transcripts. If the person bringing the action proceeds without
 2-67 the state's participation, the court, without limiting the status
 2-68 and right of that person, may permit the state to intervene at a
 2-69 later date on a showing of good cause. A person pursuing an action

3-1 under this subsection may file suit for claims that accrued on or
 3-2 after September 1, 1995, the effective date of this statute.

3-3 SECTION 3. Subsections (b) and (c), Section 36.110, Human
 3-4 Resources Code, are amended to read as follows:

3-5 (b) If the court finds that the action is based primarily on
 3-6 disclosures of specific information, other than information
 3-7 provided by the person bringing the action, relating to allegations
 3-8 or transactions in a state criminal or civil hearing, in a state
 3-9 legislative or administrative report, hearing, audit, or
 3-10 investigation, or from the news media, the court may award the
 3-11 amount the court considers appropriate but not more than 10 [seven]
 3-12 percent of the proceeds of the action. The court shall consider the
 3-13 significance of the information and the role of the person bringing
 3-14 the action in advancing the case to litigation.

3-15 (c) A payment to a person under this section shall be made
 3-16 from the proceeds of the action. A person receiving a payment under
 3-17 this section is also entitled to receive from the defendant an
 3-18 amount for reasonable expenses, reasonable attorney's fees, and
 3-19 costs that the court finds to have been necessarily incurred. The
 3-20 court's determination of expenses, fees, and costs to be awarded
 3-21 under this subsection shall be made only after the defendant has
 3-22 been found liable in the action or the claim is settled [state
 3-23 settles an action with a defendant that the court determined, after
 3-24 a hearing, was fair, adequate, and reasonable in accordance with
 3-25 Section 36.107(c)].

3-26 SECTION 4. Subsection (b), Section 36.113, Human Resources
 3-27 Code, is amended to read as follows:

3-28 (b) The court shall dismiss [A person may not bring] an
 3-29 action or claim under this subchapter, unless opposed by the
 3-30 attorney general, if substantially the same [that is based on the
 3-31 public disclosure of] allegations or transactions as alleged in the
 3-32 action or claim were publicly disclosed in a state criminal or civil
 3-33 hearing in which the state or an agent of the state is a party, in a
 3-34 state legislative or administrative report, or other state hearing,
 3-35 audit, or investigation, or from the news media, unless the person
 3-36 bringing the action is an original source of the information. In
 3-37 this subsection, "original source" means an individual who:

3-38 (1) prior to a public disclosure under this
 3-39 subsection, has voluntarily disclosed to the state the information
 3-40 on which allegations or transactions in a claim are based [has
 3-41 direct and independent knowledge of the information on which the
 3-42 allegations are based and has voluntarily provided the information
 3-43 to the state before filing an action under this subchapter that is
 3-44 based on the information]; or

3-45 (2) has knowledge that is independent of and
 3-46 materially adds to the publicly disclosed allegation or
 3-47 transactions [allegations] and who has voluntarily provided the
 3-48 information to the state before filing an action under this
 3-49 subchapter [that is based on the information].

3-50 SECTION 5. Section 36.115, Human Resources Code, is amended
 3-51 by amending Subsection (a) and adding Subsection (c) to read as
 3-52 follows:

3-53 (a) A person, including an employee, contractor, or agent,
 3-54 who is discharged, demoted, suspended, threatened, harassed, or in
 3-55 any other manner discriminated against in the terms and conditions
 3-56 of employment because of a lawful act taken by the person or
 3-57 associated others in furtherance of an action under this
 3-58 subchapter, including investigation for, initiation of, testimony
 3-59 for, or assistance in an action filed or to be filed under this
 3-60 subchapter, or other efforts taken by the person to stop one or more
 3-61 violations of Section 36.002 is entitled to:

3-62 (1) reinstatement with the same seniority status the
 3-63 person would have had but for the discrimination; and

3-64 (2) not less than two times the amount of back pay,
 3-65 interest on the back pay, and compensation for any special damages
 3-66 sustained as a result of the discrimination, including litigation
 3-67 costs and reasonable attorney's fees.

3-68 (c) A person must bring suit on an action under this section
 3-69 not later than the third anniversary of the date on which the cause

4-1 of action accrues. For purposes of this section, the cause of
4-2 action accrues on the date the retaliation occurs.

4-3 SECTION 6. Subsection (c), Section 36.113, Human Resources
4-4 Code, is repealed.

4-5 SECTION 7. The changes in law made by this Act to Section
4-6 36.002, Human Resources Code, apply only to conduct that occurs on
4-7 or after the effective date of this Act. Conduct that occurs before
4-8 the effective date of this Act is governed by the law in effect at
4-9 the time the conduct occurred, and that law is continued in effect
4-10 for that purpose.

4-11 SECTION 8. The changes in law made by this Act to Sections
4-12 36.110 and 36.113, Human Resources Code, apply only to a civil
4-13 action for a violation of Section 36.002, Human Resources Code, as
4-14 amended by this Act, commenced on or after the effective date of
4-15 this Act. A civil action commenced before the effective date of
4-16 this Act is governed by the law in effect immediately before the
4-17 effective date of this Act, and that law is continued in effect for
4-18 that purpose.

4-19 SECTION 9. The changes in law made by this Act to Section
4-20 36.115, Human Resources Code, apply only to a cause of action that
4-21 accrues on or after the effective date of this Act. A cause of
4-22 action that accrued before the effective date of this Act is
4-23 governed by the law applicable to the cause of action immediately
4-24 before the effective date of this Act, and that law is continued in
4-25 effect for that purpose.

4-26 SECTION 10. This Act takes effect September 1, 2013.

4-27

* * * * *